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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Policy and Rules Concerning the)	CC Docket No. 96-61
Interstate, Interexchange Marketplace)	
)	
Implementation of Section 254(g) of the)	
Communications Act of 1934, as amended)	
)	
1998 Biennial Regulatory Review --)	CC Docket No. 98-183
Review of Customer Premises Equipment)	
and Enhanced Services Unbundling Rules)	
in the Interexchange, Exchange Access)	
and Local Exchange Markets)	

REPLY OF AMERITECH

Ameritech¹ submits this reply to comments filed in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned docket.² Ameritech's proposal for modifying the customer premises equipment ("CPE") bundling prohibition -- identical to the position of BellSouth -- and its proposal to leave the information service unbundling requirement essentially intact answers all concerns of those who oppose the ability of incumbent local exchange carriers ("ILECs") to bundle CPE and information services with telecommunications services.

¹ Ameritech means: Ameritech Illinois, Ameritech Indiana, Ameritech Michigan, Ameritech Ohio, and Ameritech Wisconsin.

² *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as Amended, 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Docket Nos. 96-61, 98-183, Further Notice of Proposed Rulemaking, FCC 98-258 (released October 9, 1998) ("FNPRM").

I. ALL WIRELINE CARRIERS SHOULD BE ABLE TO BUNDLE CPE WITH TELECOMMUNICATIONS SERVICES AS LONG AS THOSE SERVICES REMAIN SUBJECT TO APPLICABLE COMMON CARRIER REQUIREMENTS.

In its comments, Ameritech pointed out that the current restriction against bundling CPE with common carrier communications services has two aspects. The first prohibits carriers from offering common carrier communications services only in connection with CPE -- *i.e.*, carriers cannot force the customers of their common carrier services to obtain CPE from them as well. Both Ameritech and BellSouth proposed no change in this requirement -- *i.e.*, common carriers should still provide telecommunications services consistent with any common carrier nondiscrimination obligations applicable in the jurisdiction with which those services are associated.³ In addition, the Commission's all carrier rule and Part 68 regulations should continue to require open interfaces for all carriers and prohibit the deployment of proprietary network-CPE connections.

However, the prohibition against bundling CPE and common carrier communications services also prohibits a carrier from offering CPE with those services on terms that are more favorable than it offers CPE to customers who do not purchase those services. It is this restriction that makes no sense in the current environment. It has the effect of imposing common carrier-like requirements on carrier provision of CPE and should be eliminated.

For example, if a local exchange carrier wanted to encourage the purchase of second lines by offering a customer who ordered a second line \$25 off a telephone set that it normally sells for \$50, there is no reason to require that the carrier also offer the same \$25 discount on the

³ For interstate services, this would mean that carriers would be required to offer telecommunications services to those customers who did not purchase CPE on the same terms and conditions as those services are available to those customer who do purchase CPE.

telephone set to those customers who do not purchase a second line. Similarly, if a carrier wanted to spur new sales of caller ID by offering \$5 off a caller ID display set for new customers, there is no reason why the carrier should be required to offer the same discount on the same set to those customers who had already purchased caller ID.

Moreover, requiring carriers to offer the same CPE discount to anybody on the same terms and conditions would likely discourage carriers from offering special discounts on CPE to encourage the purchase of new advanced telecommunications services. Obviously, the logical marketing program would be to offer special discounts for new purchasers of those services -- to help those customers whose purchase of the new advanced service may be deterred by the high price of compatible CPE. If the carrier also had to offer discounted CPE to those customers who had already purchased the advanced service (and who presumable had already purchased compatible CPE), the carrier may well decide that it made no business sense to offer discounted CPE at all. The result would be that fewer customers would purchase the advanced telecommunications service.

Imposing such a nondiscrimination, common carrier-like obligation on the provision of CPE serves no legitimate public policy purpose. It safeguards nothing. Permitting carriers to offer CPE in connection with telecommunications services on terms that are not generally available simply cannot result in any carrier's domination of the CPE market. As long as telecommunications services continue to be offered consistent with the common carrier obligations of the relevant jurisdiction, there is no way that any carrier could inappropriately leverage any market power in connection with telecommunications services to unfairly position

itself in the CPE market.⁴ And, in fact, that is exactly what the Commission itself found when it embraced the identical modification of the CPE bundling prohibition for cellular CPE.⁵

It is the continuation of any applicable common carrier requirements for all common carrier services that answers virtually all objections raised by commenters opposing the elimination of the Commission's CPE bundling prohibition.⁶ For example, CEMA argues that the current prohibition against bundling is beneficial because it prevents carriers from forcing customers of basic service to use the carrier's CPE.⁷ CEMA fears that abandonment of the rule will allow carriers to force their telecommunication service customers to purchase CPE from them and that it would violate common carrier nondiscrimination rules because carriers could choose to make service available only to those customers who bought their CPE.⁸ The concerns of KMC, Team Centrex, and CIX are similar.⁹ The Public Utilities Commission of Ohio ("PUCO") raises the same issue,¹⁰ but also adds that permitting the sale of a bundle at one price could potentially hide a subsidy and interfere with the states' pricing authority over intrastate

⁴ See Ameritech Comments at 6-14.

⁵ *In the Matter of Bundling of Cellular Customer Equipment and Cellular Service*, CC Docket No. 91-34, Report and Order, FCC 92-207 (released June 10, 1992) ("Cellular Unbundling Order") 7 FCC Rcd. 4028.

⁶ This is the recommendation of API (at 11-12).

⁷ CEMA at 5.

⁸ *Id.* at 6-7.

⁹ KMC at 5; Team Centrex at 2; CIX at 5. The allegation of CIX (at 8) that Ameritech inappropriately bundles ADSL modems and Internet service with its ADSL service is false. ADSL service is offered by Ameritech Advanced Data Services ("AADS") on a common carrier basis to anyone who wants it. A separate affiliate, Ameritech Interactive Media ("AIM"), purchases ADSL service from AADS and uses it to provide Ameritech.net High Speed Internet Service. AIM has also made special offers on ADSL modems in connection with customers' purchases of the Internet service.

¹⁰ PUCO at 3.

services.¹¹ Obviously, maintaining the requirement that telecommunications services continue to be subject to any applicable nondiscrimination requirements satisfies all these concerns, including PUCO's jurisdictional pricing issue. Permitting carriers to offer "special deals" on CPE for those customers who purchase telecommunications services does not implicate those concerns in any respect. Common carrier services would continue to be offered on the same terms and conditions to all customers regardless of the source of their CPE.

II. RULES CONCERNING CPE BUNDLING SHOULD BE THE SAME FOR ALL CARRIERS.

In the FNPRM, the Commission noted its tentative conclusion to eliminate the prohibition of CPE bundling in its entirety for nondominant interexchange carriers ("IXCs").¹² It then sought comment on whether the rules should be modified at all for local exchange carriers and on whether differences in market power in the telecommunications market should be considered in that regard.¹³

As noted in Ameritech's and BellSouth's comments, however, elimination of the prohibition against offering special deals on CPE for customers who purchase communications services will have no adverse effect on the CPE market regardless of the status of the carrier's market power in the telecommunications services market. As long as carriers' telecommunications services remain subject to any applicable common carrier requirements, no carrier -- IXC or ILEC -- will be in a position to dominate the CPE market.

¹¹ *Id.* at 4-5.

¹² FNPRM at ¶12.

¹³ *Id.* at 27-29.

Similarly, however, all carriers should continue to be subject to applicable common carrier requirements with respect to their common carrier offerings until such time as the appropriate regulatory body decides to change those requirements. At this time, the Communications Act requires all carriers to make their interstate common carrier offerings available to all customers on the same terms and conditions regardless of where those customers purchase their CPE. Any Commission decision to relieve domestic interexchange carriers from that requirement must be seriously evaluated in light of the global presence and extensive vertical integration of carriers such as AT&T. Allowing such carriers to offer telecommunications services only in connection with the customer's purchase of CPE could lead to inappropriate leverage and the development of proprietary interfaces.

At this time, therefore, there is no reason to treat IXC's and ILEC's differently with respect to the regulation of CPE bundling.

III. THE COMMISSION SHOULD CLARIFY THAT ITS INFORMATION SERVICES UNBUNDLING RULE DOES NOT PROHIBIT THE OFFERING OF INFORMATION SERVICES IN A MANNER SIMILAR TO THAT PERMITTED FOR CPE.

The Commission's current information services unbundling rule requires all carriers that own common carrier transmission facilities and offer information services provide the transmission services utilized by their own information services operations to others on a nondiscriminatory basis.¹⁴ In the FNPRM, the Commission sought comment on AT&T's request to eliminate this requirement for IXC's.¹⁵

¹⁴ *In the Matter of Second Computer Inquiry*, Docket No. 20828, Final Decision, FCC 80-189 (released May 2, 1980) 7 FCC 2d. 384 at ¶231.

¹⁵ FNPRM at ¶37.

Several parties expressed concern that elimination of this restriction could enable carriers to make telecommunications services only available in connection with their information services.¹⁶ In addition, CIX raises the specter that elimination of the unbundling requirement would jeopardize open network protocols.¹⁷

There is merit to these concerns. Therefore, consistent with their positions with respect to CPE, neither Ameritech nor BellSouth are recommending any change in the current rule. Rather, Ameritech simply requests that the Commission clarify that information services can be bundled with telecommunications service offerings on the same basis that CPE can -- *i.e.*, as long as underlying telecommunications services remain subject to applicable common carrier nondiscrimination requirements of the jurisdiction with which those services are associated.¹⁸

IV. BOCs' SECTION 272 AFFILIATES SHOULD BE TREATED THE SAME AS OTHER NONDOMINANT CARRIERS.

In the FNPRM, the Commission noted that it has already classified BOCs' section 272 affiliates as nondominant in the provision of in-region, interstate, interLATA services and out-of-region interstate, domestic, interexchange services.¹⁹ In this light, the Commission tentatively concluded that those affiliates should be permitted to bundle CPE with interstate, domestic,

¹⁶ CIX at 5; Network Plus at 5; AOL at 7; the Internet Service Providers' Consortium (at 6-7) is similarly concerned with nondiscriminatory access to underlying transmission services.

¹⁷ CIX at 6.

¹⁸ Network Plus, however, asks the Commission to go farther and to impose virtual common carrier requirements on ILEC provision of information services. (Network Plus at 14-15.) While Ameritech does not know the details of Network Plus's complaint against Bell Atlantic, imposing common carrier nondiscrimination obligations on any carrier's provision of information services is flatly contrary to more than two decades of Commission precedent regarding the nonregulated status of those services, commencing with the Commission's Computer II Orders. Moreover, Network Plus's request takes regulation in exactly the opposite direction of that dictated by the de-regulatory provisions of the Telecommunications Act of 1996.

¹⁹ FNPRM at ¶24.

interexchange services to the same extent as other nondominant IXC's.²⁰ Despite AT&T's suggestion that the resolution of this issue be deferred,²¹ the Commission's tentative conclusion is inescapable and should be adopted.

MCI, however, spends substantial effort in arguing that BOCs' section 272 affiliates should not be permitted to bundle CPE with local services.²² Despite MCI's arguments, there is no reason to treat BOCs' section 272 affiliates differently from any other non-ILEC provider of local exchange service -- provided, however, that their provision of local exchange service is based on (1) the utilization of its own facilities; (2) the purchase of unbundled network elements on a nondiscriminatory basis; or, (3) the resale of the BOC's local exchange service which is obtained on a wholesale basis on nondiscriminatory terms. As the Commission concluded in the Non-Accounting Safeguards Order, a BOC's section 272 affiliate should not be considered an ILEC (*i.e.*, a dominant provider of local exchange service) unless it fulfills the requirement of section 251(h).²³ This, coupled with the Commission's extensive analysis in the LEC Classification Order,²⁴ can only lead to the conclusion that, unless a BOC's section 272 affiliate is deemed to be an incumbent LEC, there is no reason to treat that affiliate any differently from any other nondominant provider of telecommunications services -- for any reason, including with

²⁰ *Id.* at ¶25.

²¹ AT&T at 15.

²² MCI at 12-29.

²³ *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, CC Docket No. 96-149, First Report and Order, FCC 96-489 (released December 24, 1996) ("Non-Accounting Safeguards Order") 11 FCC Rcd. 21905 at ¶312-316.

²⁴ *In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket Nos. 96-149, 96-61, Second and Third Reports and Orders, FCC 97-142 (released April 18, 1997), 12 FCC Rcd. 15756.

respect to the CPE and information services bundling rules. Given the section 272 safeguards, the affiliate is simply not in a position to inappropriately leverage any alleged BOC market power in connection with local exchange services.

V. CONCLUSION.

In light of the forgoing, all wireline carriers should be permitted to bundle CPE with common carrier offerings as long as, the common carrier services remain subject to any nondiscrimination requirements applicable in the relevant jurisdiction.

Consistent with this, there is no reason for the Commission to eliminate its information services unbundling requirement for any wireline carrier. Rather, the Commission should merely clarify that this unbundling requirement does not prohibit carriers from offering information services on a bundled basis with common carrier services as long as those common carrier services remain subject to any applicable nondiscrimination requirements.

Finally, with respect to CPE and information services unbundling requirements, the BOCs' section 272 affiliates should be treated the same as any other nondominant provider of telecommunications services.

Respectfully submitted,



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Dated: December 23, 1998

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CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Reply of Ameritech has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 23rd day of December, 1998.

By:

A handwritten signature in black ink, appearing to read 'Todd H. Bond', written over a horizontal line.

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